

00000005

Meyer, Unkovic & Scott

A T T O R N E Y S A T L A W

1300 Oliver Building • Pittsburgh, Pennsylvania 15222
(412) 456-2800
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EPA Region 5 Records Ctr.



180395

DIRECT DIAL NO.

456-2837

IN REPLY REFER
TO FILE NO.

88-0892

October 18, 1989

Edward J. Kowalski,
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Mail Drop 5CS-TUB-3
230 S. Dearborn Street
Chicago, Illinois 60604

RE: **August 25, 1989 Unilateral Administrative
Order in the Matter of Ninth Avenue Dump,
Gary, Indiana**

Dear Mr. Kowalski:

This letter is the formal response of the Respondent, Blaw Knox Corporation (hereinafter "BKC"), to the Unilateral Administrative Order (hereinafter "Order") issued by Basil G. Constanlelos, Director of Waste Management Division of the United States Environmental Protection Agency (hereinafter "EPA"), Region V, on August 25, 1989, under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereinafter "CERCLA"), 42 U.S.C. §§9601, et al.

As we previously informed you by letter dated April 6, 1989 and by BKC's Section 104(e) response dated September 19, 1988, BKC is not a "liable person" within the meaning of Section 107 of CERCLA since it was not involved with the generation and/or transportation of any material disposed of at the Ninth Avenue Dump during the time period from 1973 through 1975. BKC did not exist as an entity at that time. Nor is it a successor corporation to the facility located in East Chicago, Indiana, which purportedly may have been involved in the generation and/or transportation of material disposed of at the Ninth Avenue Dump during the 1973-1975 time period. Consequently, BKC objects to the Order to the extent that its Findings of Fact and Determinations state, imply or infer that BKC is a "liable person" within the meaning of Section 107 of CERCLA.

Edward J. Kowalski,
October 18, 1989
Page 2

Additionally, even if BKC is a "liable person" under Section 107 of CERCLA, BKC objects to the Order to the extent that its Findings of Fact and Determinations state, imply or infer that the material purportedly generated and transported for disposal at the Ninth Avenue Dump is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14). The majority of the material from the East Chicago, Indiana facility was apparently a solid waste material consisting of pure silica sand, pure bentonite and a cereal mix which contained 100% corn material. Also, it is believed that some loose short pieces of rebar, which are low carbon steel rods, may have been disposed of at the Ninth Avenue Dump from the East Chicago facility. To the best of our knowledge, none of this material, or its constituents, have been classified as "hazardous" under any of the statutory provisions referenced in Section 101(14) of CERCLA. Therefore, to the extent that the Order's Findings of Fact and Determinations state, imply or infer that the purportedly disposed of material owned or possessed by the entity operating the East Chicago facility is a "hazardous substance" as defined in Section 101(14) of CERCLA, BKC objects to the Order.

Finally, BKC objects to the Order to the extent that its Findings of Fact and Determinations state, imply or infer that the purported disposal of the material owned or possessed by the entity operating the East Chicago facility resulted in an actual or threatened "release" of a hazardous substance within the meaning of Section 107 of CERCLA. There is no evidence that the purported disposal of the solid material resulted in the leeching of organic compounds which compromised ground water quality or caused other environmental problems at the site. Also, studies to date support the conclusion that the disposal of foundry process solid materials do not result in the contamination of the environment. In fact, it is my understanding that the EPA came to this same conclusion when it instructed its outside consultant, Techlaw, not to include BKC and Respondent U.S. Reduction, in the volumetric ranking and allocation of the potentially responsible parties (hereinafter "PRPs") for the Ninth Avenue Dump clean-up. Accordingly, BKC objects to the Order to the extent that its Findings of Fact and Determinations state, imply or infer that the purported disposal of the material owned or possessed by the entity operating the East Chicago facility resulted in the "release" of a hazardous substance within the meaning of Section 107 of CERCLA.

Based upon the foregoing, we respectfully request that the EPA remove BKC from the list of PRPs for the Ninth Avenue Dump site.

carefully considered these facts when it analyzed which PRPs would be eligible for the de minimis settlement. After such consideration, U.S. EPA determined that Blaw-Knox failed to make a showing that it satisfied the statutory requirement for de minimis settlers under Section 122(g) of CERCLA. Accordingly, Blaw-Knox was not permitted to join in the de minimis settlement at the site.

I hope this letter has satisfactorily answered your concerns regarding the de minimis settlement at the Ninth Avenue Dump. If you have any further comments you are free to provide them when the de minimis settlement is published in the Federal Register for public comment.

Sincerely,

A handwritten signature in cursive script that reads "Mary Butler".

Mary E. Butler
Assistant Regional Counsel

1

bcc: Ms. Deborah Garber, ORC
Ms. Allison Hiltner, WMD

Edward J. Kowalski,
October 18, 1989
Page 3

Thank you for your cooperation and assistance in this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Ronald L. Hicks, Jr.", written in dark ink.

Ronald L. Hicks, Jr.

RLHjr:jp



Butler

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604
JUL 10 1990

REPLY TO ATTENTION OF:

Mr. Ronald L. Hicks
Meyer, Unkovic & Scott
1300 Oliver Building
Pittsburg, Pennsylvania 15222

Re: Ninth Avenue Dump Site; Gary, Indiana

Dear Mr. Hicks,

I am writing in response to your letter of November 3, 1989 and your recent telephone call in which you asked me to explain why Blaw-Knox was not permitted to participate in the de minimis settlement for the above referenced site. Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), de minimis settlements are restricted to potentially responsible parties (PRPs) who contributed a small volume of hazardous substances to the site and whose volumetric contribution was of minor toxicity. The United States Environmental Protection Agency (U.S. EPA) determined that for purposes of the Ninth Avenue de minimis settlement, only PRPs with volumetric contributions below 1.2 percent in the TechLaw ranking would be eligible for the settlement.

U.S. EPA understands that Blaw-Knox believes it should qualify as a de minimis PRP under the statute because Blaw-Knox believes its foundry sand was of low toxicity and because Blaw-Knox received a volumetric ranking of zero (0) in the TechLaw ranking. However, the zero (0) volume found in the TechLaw ranking was never intended to imply that Blaw-Knox contributed a negligible amount of waste to the site. Rather, the zero (0) volume was assigned to Blaw-Knox because while foundry sand was observed throughout the site, only the portions of the site where liquid waste was disposed were determined to be in need of remediation. Accordingly, to prevent Blaw-Knox from shouldering a disproportionate share of the liability at the site, U.S. EPA assigned the company a zero (0) ranking, meaning that its ranking could not be accurately defined by volume alone.

U.S. EPA contends that Blaw-Knox contributed several thousand truck loads of foundry sand to the Ninth Avenue Dump site. U.S. EPA also contends that this foundry sand contained hazardous substances under CERCLA, including phenols and furans. U.S. EPA

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
55 EAST MONROE STREET
CHICAGO, ILLINOIS 60603-5803

LOS ANGELES OFFICE
ONE CENTURY PLAZA SUITE 3300
2029 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-3019
AREA CODE 213 277 7200
FACSIMILE 213 201 5219

NEW YORK OFFICE
757 THIRD AVENUE
NEW YORK NEW YORK 10017-2013
AREA CODE 212 715 9000
TELEX NO 422867
FACSIMILE 212 752 3116

AREA CODE 312 346 8000
CABLE ADDRESS INTERLEX
FACSIMILE 312 269 8869

WRITER S DIRECT DIAL (312) 269-8963

WASHINGTON, D.C. OFFICE
815 CONNECTICUT AVENUE N.W.
WASHINGTON D.C. 20006-4004
AREA CODE 202 463 2400
TELEX 440604 S5FG
FACSIMILE 202 828 5393

SAN FRANCISCO OFFICE
ONE POST STREET
SUITE 2450
SAN FRANCISCO CALIFORNIA 94104 5228
AREA CODE 415 397 2823
FACSIMILE 415 397 8549

July 26, 1989

Mr. Edward J. Kowalski
Assistant Regional Counsel
United States Environmental
Protection Agency
Region V
230 S. Dearborn Street
Chicago, IL 60604

Re: Ninth Avenue Site

Dear Ed:

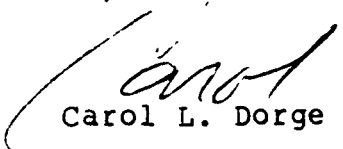
On behalf of the Ninth Avenue Executive Committee, I am forwarding information that was collected by one of the Ninth Avenue participants relating to Blaw Knox Company's foundry sand and the disposal location of this material. The documents indicate that the Blaw Knox foundry sand was sampled for phenol and furan and both were reported as present. Both are hazardous substances under CERCLA.

Please feel free to give me a call if you have any questions.

Very truly yours,

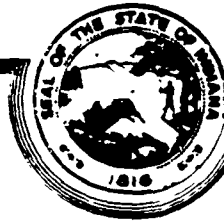
SEYFARTH, SHAW, FAIRWEATHER & GERALDSON

By


Carol L. Dorge

CLD/na
Enclosure

STATE OF INDIANA



INDIANAPOLIS

STATE BOARD OF HEALTH

AN EQUAL OPPORTUNITY EMPLOYER

Address Reply to:
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, IN 46206

March 23, 1976

Mr. Ted Peters, President
Industrial Disposal Company
1103 East Chicago Avenue
East Chicago, Indiana 46312

Dear Mr. Peters:

Re: Disposal of Mold Sand from
Blaw Knox Foundry

This is to confirm a phone conversation you had with George Seyniff on March 17, 1976, concerning the disposal of used ritual foundry sand from Blaw Knox Foundry. Approval is hereby granted for the disposal of this material only, at your property located immediately east of Cline Avenue and south of the Grand Calumet River in Gary and at the place of property owned by Steve Martell which is located 0.3 of a mile east of Cline Avenue and south of 9th Avenue in Gary.

It should be noted that this approval is for used foundry sand only and not for metal, wood, paper or other wastes.

Very truly yours,

Richard F. Dove, Director
Division of Sanitary Engineering

RD/mb

cc: Blaw Knox Foundry
Lake County Health Department
Gary City Health Department
Mr. Richard Clenton

3/30/76

Memo: From to Robert Grant

Re: Steve Martell
U.S. Engineering
9th Street Ramp
Lake Co. Ind.

This will acknowledge your own teleph. conversation of 3/30/76 regarding the above.

In accordance with your request I am enclosing copies of our correspondence to Steve Martell and Ted Peters regarding the disposal of ~~foundry sand on this site.~~ ~~the same.~~ (As you can see)

We received a ~~laboratory~~ analysis of the Blue Knot foundry sand ~~which is the first one completed~~ on Mar 18, 1976.

It is not the policy of the SWMS to issue "verbal" approvals. We ~~request~~ ^{request} that appropriate analysis be performed to determine land disposal suitability.

cc: Pat Stevens
George Raybun

HAZARDOUS WASTE WORK SHEET

GENERATOR

BELOW KNOX COMPANY

ADDRESS

4407 RAILROAD AVE.P.O. BOX 299EAST CHICAGO 46312

TELEPHONE

PERSON(S) CONTACTED

James L. Calhoun - Pk. Mgr.

Waste Description (process, treatment, dewatering device, chemical characteristics, physical characteristics, i.e. percent solids)

ATTY Robert N. Moore4407 RAILROAD AVENUEEAST CHICAGO, IND. 46312

REQUEST ORIGINALLY CAME FROM R. CLEATON
BUT INFO. ON FOUNDRY SAND WAS LACKING.
DAYHUFF ARRANGED FOR LEACHATE TESTS TO BE
RUN ON THE SAND PRIOR TO OUR DECISION

RESULTS: phenol 0.018 mg/l.

Furan - trace (<.1 mg/l)

MARCH 23, 76

APPROVALS WRITTEN FOR DISPOSAL OF FOUNDRY SAND AT:1. PROPERTY OWNED BY INDUSTRIAL DISPOSALLOCATED IMMEDIATELY EAST OF CLINEAVENUE & SOUTH OF THE GRAND CALUMET RIVER2. MARTIN'S DUMP at 9th Avenue, west
of Cline Avenue.

* COPIES
S.W. files

LABORATORY REPORT

JRB



Seaway Industrial Laboratories, Inc.

AIR AND WATER POLLUTION CONTROL

342 844 COLUMBUS DRIVE
HAMMOND, INDIANA 46312
(319) 922-1770

CLIENT

INVESTIGATION

INDUSTRIAL DISPOSAL CORPORATION
1102 East Columbus Drive
East Chicago, Indiana
46312

Leaching Test--to determine Fu
and Phenolic co

Period Covered

Date of Our Report

Laboratory No.

Mar. 4, '76

Mar. 15, '76

OOM 7636

RESULTS

Three cans of 100# Silica Sand blended to form a composite sample. Performed leaching test and determined phenol and furan content of material as submitted to Seaway Laboratories for testing.

Phenol--0.018 milligrams per liter.

Furan--trace (less than 0.1 milligrams per liter).

Respectfully

SEAWAY INDUSTRIAL LABORATORIES, INC.

C. J. Cichon
C.J. Cichon, Director

CJC/ab




September 19, 1988

- f. None taken.
 - g. Unknown
 - h. Unknown
 - i. Not applicable
 - j. Not applicable
 - k. Unknown
 - 1. There were no hazardous substances. The final disposition is unknown.
2. No documents exist.
3. It is unknown if there would be any insurance coverage. However, since it is believed that there were no hazardous substances involved, this is probably a moot question.

The above information has been compiled based upon my personal inquiries and is based upon the best of my knowledge, information and belief.

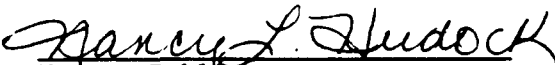
Sincerely yours,

BLAW KNOX CORPORATION

By: 
W. J. Stewart, Jr.
Manager of Engineering

WJS:dk

Sworn to and subscribed
before me this 19th day
of September, 1988.


Notary Public

NANCY L. HUDOCK, NOTARY PUBLIC
SCOTSDALE BOROUGH, WESTMORELAND COUNTY
MY COMMISSION EXPIRES AUG 21, 1989
Member, Pennsylvania Association of Notaries





BLAW KNOX CORPORATION

ONE OLIVER PLAZA • PITTSBURGH, PA 15222

412/263-2300
FAX 412/263-2308
DIRECT DIAL NO.

September 19, 1988

Ms. Susan Swales (SHE-1)
U.S. Environmental Protection Agency
Waste Management Division - Region V
230 South Dearborn Street
Chicago, IL 60604

RECEIVED
SEP 20 1988
SUPERFUND PROGRAM

Dear Ms. Swales:

The following information is in response to your letter of August 18, 1988, to Blaw Knox in East Chicago, Illinois, concerning both the U.S. Scrap, Illinois and Ninth Avenue sites.

The answers given hereunder are given by Blaw Knox Corporation which purchased in 1985 from White Consolidated Industries, Blaw Knox Foundry and Mill Machinery. During the time period apparently involved in your inquiry, the facility was owned by Blaw Knox Company (different than the responding party) prior to 1968 and in 1968 was purchased by White Consolidated Industries of Cleveland, Ohio. Referring to the numbers beginning on Page 2 of your letter, the following are our responses:

1. Although there is presently no individual working for Respondent that has any direct information, disposal only at the Ninth Avenue site between 1965 and 1976 may have been arranged with Industrial Disposal. There apparently was no disposal at the U.S. Scrap, Illinois site.
 - a. Steve Martell
 - b. Unknown
 - c. To the best of Respondent's information and knowledge, there were no hazardous substance or liquids disposed. Any waste would have been pure silica sand, pure bentonite and cereal mix which usually contains 100% corn material, none of which has been classified as hazardous. Although there is no direct information available, there also may have been some loose short pieces of rebar which are low carbon steel rods, also not containing any hazardous waste.
 - d. Blaw Knox Foundry and Mill Machinery was the owner of the waste materials. There were no hazardous substances.
 - e. There were no hazardous substances. Quantities are unknown.